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1-1-1984

# Brazil

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### Recommended Citation

*Brazil*, 15 U. Miami Inter-Am. L. Rev. 600 (1984)

Available at: <http://repository.law.miami.edu/umialr/vol15/iss3/10>

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agreement were to avoid double taxation of both income and net worth and to prevent tax evasion. The agreement will come into force when the ratification instruments are exchanged. To date, Argentina has made double taxation treaties with various countries including: *Japan* 1961 (approved 1966); *West Germany* 1966 (approved 1967); *Brazil* 1972 (road transportation); *Japan* 1975 (approved 1976, operation of international vessels and aircraft); *Brazil* 1975 (approved 1977, sea and air transport); *Bolivia* 1976 (approved 1978); *West Germany* 1978 (approved 1979); *France* 1979 (approved 1981); *Cuba* 1978 (approved 1980, operation of vessels); *USSR* 1979 (approved 1981, international sea and air transport); *France* 1979 (approved 1981); *Austria* 1979 (approved 1982); *Ecuador* 1981 (approved 1982, air transportation); *Spain* 1978 (approved 1982, air and sea transport) and *Brazil* 1980 (approved 1982).

#### X. INTER-AMERICAN CONVENTION ON BILLS OF EXCHANGE, PROMISSORY NOTES, ETC. RATIFICATION

Law 22691, published in the Official Gazette on December 14, 1982, ratified the Inter-American Convention on Confictive Laws in the Field of Bills of Exchange, Promissory Notes and Invoices, which was signed in Panama on January 30, 1975. Under this convention, the form of the draft, endorsement, and guarantee shall be governed by the law of the country where the act occurs.

#### XI. NEW ARGENTINE CURRENCY

A new unit of currency called the "Peso Argentino" (\$a), which has been in existence since June 1, 1983, and which is equivalent to 10,000 pesos of the old currency has been formally adopted. As of July 18, 1983, the official rate of exchange to the US dollar was approximately \$a 9.70.

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### BRAZIL

*The following is a brief summary of several legislative and administrative rulings, and several judicial and administrative decisions by the Brazilian government which may affect foreign trade and investments in Brazil.*

## I. LEGISLATIVE AND ADMINISTRATIVE RULINGS

### *New Salary Policy*

On October 19, 1983, the National Congress rejected the Decree-law that had introduced a salary policy limiting all salary raises to 80% of the National Consumer Price Index (INPC). In substitution for Decree-law No. 2045/83, the President of the Republic immediately signed Decree-law No. 2064 on October 19, 1983 to impose a series of measures to fight inflation. The new salary policy introduced biannual salary increases ranging from 100% of the INPC for those who earn up to three times the minimum wage, to 30% of the INPC for those who earn more than 38 times the minimum wage. This system was to be maintained until July 31, 1985. After August 1, 1988, all salaries would be adjusted to free negotiations between employers and employees, except for the minimum wage. The minimum wage is now equivalent to Cr\$ 57.120,00 (US\$ 68.16).

As there were evident signs that the National Congress would also reject the second Decree-law, No. 2064/83, the President and his Ministers negotiated a substitute Decree-law, changing the salary policy that had been introduced on October 19. According to the new Decree-law, listed as Decree-law No. 2065 of October 27, 1983, the biannual salary increases which were to be granted until July 31, 1985 will be structured as follows: up to three times the minimum wage - 100% of the INPC; from three to seven times the minimum wage - 80% of the INPC; from seven to fifteen times the minimum wage - 60% of the INPC; above fifteen times the minimum wage - 50% of the INPC. In addition, the biannual raises may not exceed 87.5% of the INPC within each company (DOU-I, of October 20, 1983 and DOU-I, of October 28, 1983).

### *Changes in Tax Legislation*

In its fight against inflation, the government introduced several changes in tax legislation by means of Decree-law No. 2064 of October 19, 1983 and Decree-law No. 2065 of October 27, 1983. The most important of these changes are the following:

(1) the figures that determine the income brackets for the personal income tax will be adjusted by a mere 100% on income tax returns filed in 1984 for 1983 income. In addition, a new tax rate of 60% was created for net annual income in excess of Cr\$

34.354.000,00 (approx. US\$ 40,000.00);

(2) the tax incentive granted to individuals, permitting them to invest a portion of their annual income tax liability in the so-called "157 Fund" has been revoked;

(3) legal entities that made a taxable profit of more than 40,000 ORTNs in 1983 shall be obliged to pay additional income tax of 10% on such excess. The additional tax rate is 15% for financial entities. This additional tax will be charged in 1984 and 1985;

(4) in general, the corporate income tax rate has been increased from 30% to 35% of the taxable profit of companies;

(5) profits and dividends distributed to partners of professional service companies, legal entities and individual firms will be taxed at the rate of 23%;

(6) the withholding tax rate on earnings made by individuals or companies on the open market was raised from 4% to 8%;

(7) the withholding tax on fees paid by companies to professional service companies was increased by 6%;

(8) the income tax withheld on the payment of rent and/or royalties, by companies to individuals, was raised from 15% to 20%;

(9) the income tax prepayment which must be made for fees and rents received by individuals from other individuals has been increased to 20% when the net receipts exceed Cr\$ 660.000,00 (approx. US\$ 790.00) per quarter (value updated for 1984) (DOU-I of October 20, 1983 and DOU-I of October 28, 1983).

### *Payments for Import and Export Insurance*

In view of the provisions of Resolution No. 851/83 and in order to bring the flow of insurance transactions made in Brazil in foreign currency back to normal, the Central Bank of Brazil issued Circular No. 816/83 establishing a mechanism for the issuance of foreign currency checks by private banks to pay for import and export insurance in favor of the Brazilian Reinsurance Institute (IRB). These checks will be issued only against the Central Bank of Brazil, thus maintaining the exchange control introduced in August of 1983.

*Tax Liability on Loan*

When an adjustment of the monetary correction used in computing the net worth of a corporation is necessary because of loans made to the partners of such corporation when the company has either reserves or retained earnings, the increased tax due from the company shall be determined based on the liability of the company rather than that of the borrowing partner (Decisions Nos. 104-3.007 and 104-3.028 of the 4th Chamber of the 1st Taxpayers Council).

*Withholding Tax for Professional Services*

The Coordinator of the Tax System issued Normative Opinion No. 15/83 establishing that income tax must be withheld at the source of such liability on all payments made by legal entities to professional service firms that provide the services of legally recognized professions. For these purposes, professional services includes; *inter alia* those of physicians, dentists, lawyers, accountants, engineers and economists. Further, merely withholding such income tax at the source of the liability does not in itself give rise to the right to the reduced tax rate provided for in art. 1, item 1, of Decree-law No. 1.790/80. The tax, even when unduly withheld, can be offset against the tax due pursuant to the income tax return of the respective year as modified by the monetary correction provided for by art. 14 of Decree-law No. 1.967/82.

*No Additional Withholding Tax for Commercial Representatives*

In Declaratory (Normative) Act No. 22/83, the Coordinator of the Tax System declared that companies which render services as commercial agents and assistants, such as companies which act as commercial representatives, are not subject to the additional 3% income tax withholding provisions of article 2 of Decree-law No. 2.030/83, as they are not subject to the 15% withholding tax required by art. 1, item 1, of Decree-law No. 1.790/80.

*Limitation of Currency Exchanges for Foreign Travel*

The Central Bank of Brazil issued Resolution No. 854/83 to amend item III of Resolution No. 84/68 and thus reduce the maximum limit of foreign currency that can be purchased by individuals travelling abroad from US\$ 1,000 to US\$ 500 (or the equivalent

in other currencies). Those travelling to countries in Central and South America can now only purchase US\$ 100 as opposed to the prior limit of US\$ 500. Children under twelve are entitled to 50% of the limit in both situations.

### *Changes in the Brazilian Mining Code*

The President of the Republic signed Decree No. 88-814 of October 4, 1983 to amend several provisions of the Regulations of the Mining Code approved by Decree No. 62.934/68. The decree adds several paragraphs to article 20, which deals with the application for authorization for mineral prospecting.

### *Priority Sequence for Foreign Remittances*

The Central Bank of Brazil established the scale of priorities for Brazilian remittances to other countries as a result of the exchange restrictions introduced by Central Bank Resolution No. 851 of July 29, 1983. This priority scale was divided into four groups for which the priority-level is the same. The first group encompasses 25 items and is headed by remittances to pay for the importation of insulin. Other items in this group include the importation of other medicines not produced in Brazil, a subsidy for raw materials used in the production of medicines and incentives to encourage the importation of food to bolster domestic supplies. Remittances for the payment of interest on bank loans and financing, with or without the "aval" guarantee of the Brazilian Treasury, are included in the third group on the priority scale.

## II. NORMATIVE ACT NO. 0064/83 OF THE NATIONAL INSTITUTE OF INDUSTRIAL PROPERTY - INPI

The Industrial Property Review of September 20, 1983 published Normative Act No. 0064/83 (AN 64/183) to create new requirements for the approval of agreements referring to the transfer of technology. In addition to the requirements previously established by the INPI, AN 64/83 established new ones which reflect the policy that has already been adopted by the INPI in a few cases. It has thus become a condition for the approval of agreements for the transfer of foreign technology, that investments be made in research and risk capital.

The provisions of AN 64/83, although referring to technology transfer in general, affect only agreements for technical industrial

cooperation, agreements for the supply of industrial technology and patent license agreements. Consequently, those agreements that involve the licensing of trademarks and rendering specialized technical services are excluded since they are not directly related to the transfer of technical know-how.

The first condition imposed by AN 64/83 is an obligation that the purchaser of the technology must invest in the technological infrastructure and in research and development in Brazil. According to item 1 of the Act, this investment must be made in the company itself and/or in a research institute.

Therefore, on analyzing the agreements in the prior consultation phase, the INPI will also examine the specific characteristics of the market, of the Brazilian company and of the technological policy prevailing at the time. If this examination leads the INPI to consider that it is necessary to substitute imports of technical know-how, it will require the Brazilian contractor to assume a commitment to implement the above-mentioned investment programs. Pursuant to sub-items 1.1 and 1.2 of AN 64/83, these programs are to be structured according to both the needs and the capacity of the Brazilian company absorbing the technology so as to assure its technological autonomy in the future. The size of the investment will be determined by the INPI based on the remuneration to be paid under the agreement and on the financial situation of the company.

Apparently, the intention of the Brazilian authorities was to avoid having equal or similar technology repeatedly imported. This measure, which seeks to strengthen the technological capacity of Brazilian companies, may ultimately lead them to exercise exclusive control over certain technical know-how throughout Brazilian territory. The wording of AN 64/83 shows that the INPI has reserved the power to determine, in each case, whether it is necessary and feasible to implement the conditions of the Act. Therefore, there is no strict rule of general application.

Another requirement established by AN 64/83 is focused specifically at Brazilian companies which are controlled by foreigners and which intend to purchase or lease technology from foreign companies that do not belong to the same economic group as their parent company. In such cases, the purchaser of the technology must not only make investments in the company's technological infrastructure and in Brazilian research and development, but the foreign company must also agree to invest risk capital in the Bra-

zilian company.

AN 64/83 is more incisive on this point and specifically provides that this investment must be equivalent to the sum that the Brazilian company will have to remit abroad in payment for the technology and that the investment must be made before the respective remittance. It is important to note that this rule applies only to purchases of technology owned by companies other than those of the same economic group as the company controlling the Brazilian company. In fact, the INPI has not permitted any companies to provide any remuneration where such foreign controlling companies have supplied technology to their affiliates in Brazil.

Furthermore, in choosing among the various concepts that exist to determine "control", the INPI has adopted the definition contained in the Foreign Capital Law. Accordingly, AN 64/83 would extend to all legal entities established in Brazil in which at least 50% of the voting capital is directly or indirectly held by the company which has its head office abroad. In applying the provisions of AN 64/83, the INPI is seeking to increase the technological capacity of Brazilian industry and to, at the same time, counterbalance the remittance of foreign exchange out of Brazil. Parallel thereto, the requirement for an equivalent investment will make production contracts more expensive thus inevitably resulting in an increase of the cost of products manufactured with foreign technology.

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## COLOMBIA

*The following is a brief summary of recent legislation and judicial decisions affecting the activity of foreign enterprises and individuals in Colombia.*

### I. NEW INCOME TAX LAW

Law 009/83, adopted by Congress in June 1983 together with Decree 2579 of September 12, 1983, has amended the income tax law in several important ways. Some of the changes enacted by Congress confirm measures adopted by the government at the end of 1982 and in the beginning of 1983 as part of its economic emergency program.